

**REMARKS**

In the Action of November 23, 2004, a Restriction Requirement was issued. It was argued that the application contains claims directed to the patently distinct species as follows:

Embodiment I: argued as having a structure depicted in Figure 1.

Embodiment II: argued as having a structure depicted in Figure 3.

Embodiment III: argued as having a structure depicted in Figure 6.

It was argued that no generic claim currently existed.

Applicants respectfully traverse this position. A generic claim should include no material element additional to those recited in the species claims, and must comprehend within its confines the organization covered in each of the species. MPEP §806.04(d). The reason for restriction requirement is not argued with a specificity in the Office Action. To Applicants' belief, each independent claim (1, 19 and 26) is confined to an LED die having substantially the same structure. Particularly, claim 1 calls for a substrate, semiconductor layers forming a device mesa, and a reflective electrode disposed over device mesa, the reflective electrode including electrical connecting material disposed over at least selected portions of the device mesa. Claims 19 and 26 in addition call for an insulating material disposed over the device mesa and an electrically transmissive layer disposed over the insulating material and electrical connecting material. The language of claim 1 does not specifically preclude the use of an insulating layer and electrically transmissive layer disposed over the insulating layer and electrically connecting material. Rather, the claim is broad enough to cover both situations where there is or is not (1) an insulating layer and/or (2) electrically transmissive layer. Therefore, this would, in Applicants belief, make claim 1 generic to the claims of Species II and III, as to the insulating and electrically conductive layers aspects.

Further, in regards to claim 26, which calls for a surface-passivating layer, it is disclosed in the specification (p. 13, lines 26-30) that the surface-passivating layer is essentially an insulating layer of a particular structure. Again, here, the language of claim 1 does not preclude a situation where an insulating layer (which is formed into a surface-passivating layer) is disposed over the device mesa. This would, in Applicants belief, make claim 1 generic to the claims of Species III, as to the insulating/surface-

passivating aspect. If the Examiner does not accept this argument, Applicants request the Examiner amend claim 26 to incorporate the language of claim 26 as currently amended in this paper.

In either case, Applicants will elect claims 1-18 for further prosecution in order to be responsive to this present Action. However, again, Applicants request, should Applicants' arguments not be accepted, that claim 26 be amended as suggested by the Applicants in this paper.

No additional fee is believed to be required for this Response to Restriction Requirement and Preliminary Amendment. However, the undersigned attorney of record hereby authorizes the charging of any necessary fees, other than the issue fee, to Fay, Sharpe, Fagan, Minnich & McKee, LLP, Deposit Account No. 06-0308.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Scott McCollister, at Telephone Number (216) 861-5582.

Respectfully submitted,

FAY, SHARPE, FAGAN,  
MINNICH & MCKEE, LLP

12/23/04  
Date

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